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SUTTER, ROCHE & GENTRY 1928
GENTRY & GENTRY 1949
GENTRY, McNULTY & KIMBLE 1955
GENTRY, McNULTY & DESENS 1979
DESENS & HITCHCOCK 1986

7/32/98 27

July 9, 1998

Docket Control
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007

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Re: MATTER OF THE COMPETITION IN THE PROVISION OF
ELECTRIC SERVICES THROUGHOUT THE STATE OF
ARIZONA

Dear Sir/Madam:

Enclosed please find the original and ten (10) copies with attachments of the
Application For Rehearing and Request for Stay of Sulphur Springs Electric
Cooperative, Inc.

Sincerely,

HITCHCOCK, HICKS & CONLOGUE

By

Christopher Hitchcock

CH:lmr
Encl.

Arizona Corporation Commission
DOCKETED

JUL 10 1998

DOCKETED BY *lmh*

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3 Sulphur Springs Valley Electric
4 Cooperative, inc.

5 **CHRISTOPHER HITCHCOCK**
6 **STATE BAR NO. 004523**

7 **BEFORE THE ARIZONA CORPORATION COMMISSION**

DOCKETED

8 **JIM IRVIN**

9 **Commissioner - Chairman**

10 **RENZ D. JENNINGS**

11 **Commissioner**

12 **CARL J. KUNASEK**

13 **Commissioner**

JUL 10 1998

DOCKETED

14 IN THE MATTER OF THE COMPETITION IN) DOCKET NO. RE 00000C-94-0165
15 THE PROVISION OF ELECTRIC SERVICES)
16 THROUGHOUT THE STATE OF ARIZONA) **APPLICATION FOR REHEARING**
17) **AND REQUEST FOR STAY OF**
18) **SULPHUR SPRINGS ELECTRIC**
19) **COOPERATIVE INC.**

20 **SULPHUR SPRINGS VALLEY ELECTRIC COOPERATIVE, INC. ("SSVEC"), a**
21 **party in the above proceeding, pursuant to A.R.S. §40-253, submits this Application for**
22 **Rehearing of Decision No. 60977 dated June 22, 1998 ("Decision") and Request for Stay.**

23 **The Decision and A.A.C. R14-2-1601 through R14-2-1616 ("rules"), and the whole**
24 **thereof, are unconstitutional, unlawful, unreasonable, in excess of the Commission's discretion**
25 **and jurisdiction, arbitrary, capricious and an abuse of the Commission's jurisdiction upon the**
26 **grounds and for the reasons set forth in AEPCO's Exceptions to Proposed Opinion and Order, a**
copy of which is attached hereto and incorporated herein, and as well upon the following grounds
and for the following reasons:

1. **SSVEC, AEPCO and other parties were given improper and inadequate notice of the**
subject matters to be dealt with in the Decision. The proceeding was noticed on nine
specific questions concerning stranded cost calculation and related matters. Instead, the
primary thrust of the Decision focuses on the desirability of Affected Utilities' divesting
their facilities. The parties due process rights were violated by this procedure.
2. **In violation of Article 15 of Arizona's Constitution, the Decision does not provide for the**

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prescribing of rates sufficient to allow Affected Utilities, including AEPCO and its Class A Members, which includes SSVEC (collectively "AEPCO and its Class A Members"), a reasonable rate of return on the fair value of their property devoted to public use.

3. The Decision exceeds the jurisdiction, power and authority granted the Commission in the Arizona Constitution and statutes by assuming powers to the Commission not granted to it and/or expressly reserved to the Legislature and the Courts.
4. The Decision violates the just compensation procedures/due process provisions of the Fifth and Fourteenth Amendments of the United States Constitution and Article II, Section 17 of the Arizona Constitution by purporting to limit amounts to be received by AEPCO and its Class A Members, including SSVEC, for deprivation of their vested property rights and by assuming to the Commission, not the Courts, the power of determining such compensation.
5. The Decision violates the just compensation provisions of the Constitution and procedural and substantial due process by severely limiting and/or effectively precluding recovery of stranded costs by AEPCO and its Class A Members, including SSVEC, by requiring a filing in relation to them before they are readily ascertainable or even known and by terminating allowance for them prior to a point when all stranded costs have been incurred.
6. The Decision violates the Commission's Electric Competition Rules, A.A.C. R14-2-1601 et seq. and Decision No. 59943 by, inter alia, ignoring the requirements of R14-2-1607.B that the "Commission shall allow recovery of unmitigated stranded costs."
7. The Decision exceeds the Commission's jurisdiction and authority by requiring that full stranded costs recovery should be available only to those Affected Utilities that choose to divest.
8. The "coerced" divestiture ordered by the Decision as a condition to full stranded costs recovery is unsupported by and contrary to the record, contrary to Decision No. 59943, beyond the Commission's jurisdiction, an exercise of the power of eminent domain which the Commission does not possess and an assumption to the Commission of judicial power reserved to the Courts.
9. The Decision purports to limit and set current and future rates to be allowed Affected Utilities on a basis other than the fair value of their property devoted to public use in violation of Article 15 of the Arizona Constitution.

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10. The Decision is impermissibly vague and violated due process requirements in that, inter alia, it prescribes no standards to govern filings for stranded costs and lacks standards to restrict the Commission's discretion in making such determination as to stranded costs.

11. The procedure followed in rendering the Decision violated SSVEC and other parties' procedural and substantive due process rights as well as A.A.C. R14-3-110 and R14-3-113.

WHEREFORE, SSVEC requests that the Commission enter its Order granting its Application for Rehearing and staying the Decision and the whole thereof.

RESPECTFULLY SUBMITTED this 9th day of July, 1998.

HITCHCOCK, HICKS & CONLOGUE

BY 
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ORIGINAL and ten (10) copies of the foregoing filed, with attachment this 9th day of July, 1998, with:

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Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Copy of the foregoing, without attachment, mailed this 9th day of July, 1998, to:

Paul Bullis, Chief Counsel
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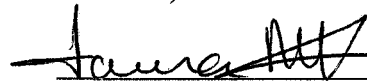
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Laura Room, Secretary

BEFORE THE ARIZONA CORPORATION COMMISSION
AZ CORP COMMISSION

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2 JIM IRVIN
Commissioner-Chairman
3 RENZ D. JENNINGS
Commissioner
4 CARL J. KUNASEK
Commissioner

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6 IN THE MATTER OF THE COMPETITION) DOCKET NO. RE-00000C-94-0165
7 IN THE PROVISION OF ELECTRIC)
SERVICES THROUGHOUT THE) EXCEPTIONS TO PROPOSED
8 STATE OF ARIZONA.) OPINION AND ORDER

9 The Arizona Electric Power Cooperative, Inc. ("AEPSCO"),
10 Duncan Valley Electric Cooperative, Inc. ("Duncan"), Graham County
11 Electric Cooperative, Inc. ("Graham") and Sulphur Springs Valley
12 Electric Cooperative, Inc. ("Sulphur Springs") and Trico Electric
13 Cooperative, Inc. ("Trico") (collectively "the Cooperatives") submit
14 these exceptions to the Hearing Officer's Proposed Opinion which was
15 issued on May 6, 1998 (the "Proposed Opinion").

16 These exceptions focus on items of major concern to the
17 Cooperatives without waiver of their ability to address different or
18 additional matters based on this record including, but not limited
19 to, filings of the other parties.¹ Incorporated herein by this
20 reference are AEPSCO's Initial Brief and Reply Brief. For
21 convenience, a copy of the Initial Brief and Reply Brief are attached
22 to the original of these exceptions filed with Docket Control and the
23 copies provided to the Commissioners.

24 The nature of exceptions is to highlight failings and
25 foibles of the Proposed Opinion. This writing will be no exception

26
27 ¹ The Cooperatives' participation in this and other stranded
28 cost proceedings is without waiver of their rights to pursue adequate
remedies for compensation in relation to loss of their vested
property rights pursuant to the State and Federal Constitutions.

1 to that general rule. Notwithstanding that, the Cooperatives commend
2 the Hearing Officer for the conduct of a complex, multiparty
3 proceeding involving complicated issues conducted over a very
4 compressed period of time. Although the Cooperatives take exceptions
5 to various provisions of the Proposed Opinion, they appreciate and
6 acknowledge the efforts of the Hearing Officer in attempting to
7 resolve these difficult issues.

8 Regulatory Assets.

9 One of the primary failings of the Proposed Opinion is its
10 inadequate, non-differentiated treatment of regulatory assets.
11 Although the Proposed Opinion attempts to deal separately with
12 regulatory assets at pages 11 and 12, (1) it is unclear whether that
13 separation is limited only to the net revenues lost method and (2)
14 the limits on recovery of regulatory assets there undoubtedly would
15 require large write-offs.

16 In general, all witnesses agreed that regulatory assets
17 should be afforded different and preferential treatment for a variety
18 of reasons including, but not limited to, the facts that they are
19 sunk costs incapable of being mitigated which have little, if any,
20 market value. Also, inadequate or improper regulatory allowance for
21 recovery of regulatory assets in this and other Commission
22 proceedings will have immediate and dire FASE 71 consequences likely
23 to lead, as the Hearing Officer acknowledged, to serious impairment
24 of the financial integrity of an Affected Utility. Finally, any
25 decision affecting the utility's ability to recover regulatory assets
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1 would raise serious jurisdictional issues pursuant to A.R.S.
2 § 40-252.

3 In AEPCO's case, its regulatory assets total approximately
4 \$31 million. To place this amount in some context, that is roughly
5 11% of AEPCO's net utility plant value. The vast majority of these
6 regulatory assets are costs already incurred but deferred for future
7 recovery so as to (1) renegotiate and reduce AEPCO's fuel costs and
8 (2) refinance and reduce AEPCO's debt costs. The benefits of the
9 cost reductions these regulatory assets produced have been flowing to
10 AEPCO's member-owners and their customer-owners for many years. The
11 reduced costs associated with these regulatory assets are a primary
12 reason why over the past 12 years AEPCO has been able to reduce its
13 rates by more than 21% and in addition to return more than
14 \$16 million in cash refunds to its members.

15 Rather than the Proposed Opinion's approach of treating
16 regulatory assets together with other stranded costs, the
17 Cooperatives would suggest that regulatory assets simply be placed in
18 their own category - regardless of choices made and methods used for
19 recovery of other stranded costs. Filings concerning the size,
20 identity, recommended recovery period and other details concerning
21 regulatory assets would be made with the Commission. These
22 proceedings should be less contested and controversial than those
23 involving other stranded cost issues. Therefore, they might be dealt
24 with as Open Meeting items without the necessity of a hearing.

25 Distribution Stranded Costs.

26 The Proposed Opinion fails to address the issue of stranded
27 costs which may arise in the future at the distribution level.

28

1 Several witnesses agreed that distribution entities, in general, and
2 distribution cooperatives specifically may incur stranded costs in
3 the metering, meter reading, billing and collection areas, but also
4 agreed that those costs are not capable of ascertainment nor
5 quantification at this time. The uncertainty concerning distribution
6 related stranded costs is heightened further by various conflicting
7 proposals currently being circulated at the Commission as well as
8 different competition criteria in HB 2663 - both of which call into
9 question precisely when and at what level certain distribution
10 related services such as metering, meter reading, billing and
11 collection will in fact be competitive.

12 The Proposed Opinion conflicts on this subject. On the one
13 hand, it does contemplate a Rule amendment to allow stranded costs
14 arising after the adoption of the Rules, if approved by the
15 Commission. On the other hand, as currently written, any stranded
16 cost proposal would have to be submitted within 30 days of the
17 Order's effective date. This would preclude stranded cost recovery
18 requests by distribution cooperatives well in advance of a point when
19 the stranded costs could be fairly accurately quantified or even
20 anticipated.

21 To address this issue, the Cooperatives would suggest that
22 a new subsection be added to R14-2-1607 which expressly provides that
23 application may be made by an Affected Utility as to distribution
24 related stranded costs arising after competition is implemented.

25 Calculation Methodologies.

26 There are a number of difficulties with the calculation
27 methodologies and individual stranded costs filing discussions at
28

1 pages 11 to 13 of the Proposed Opinion. Key problems are as follows:

2 • Although on its face the Proposed Opinion purports to
3 allow Affected Utilities an opportunity to recover
4 100% of stranded costs, analysis quickly reveals that
5 the methods authorized do not deliver on that promise.
6 For example, the net revenues lost assumption that, in
7 effect, there would be 100% growth in a five year
8 period is not only not supported by any record
evidence, but is contrary to the record evidence. It
certainly is a blanket assumption which has little, if
any, application to the rural areas of the state. The
effect is to reduce by at least 50% and possibly more
any realistic opportunity to recover unmitigated
stranded costs.

9 • The three options proposed force utilities to select
10 one to the exclusion of others rather than allowing
11 utilities to fashion an overall plan which might
contain rational cost effective blends of different
options.

12 • It is possible that the Financial Integrity
13 Methodology at pages 12-13 might be a workable
14 solution for the Cooperatives. However, no details
15 are available as to what the "minimum financial
16 ratios" would be. Therefore, entities choosing this
17 method would be purchasing the classic "pig in a
18 poke." AEPCO is also not certain what accounting
19 write-off/financial statement impacts the ten year
20 recovery limitation might have.

21 • The thirty day filing requirement is simply
22 inadequate. It will serve no one well and, in fact,
23 may retard progress and processing if utilities are
24 forced to make filings in haste. Sixty days is an
absolute minimum in which to prepare an adequate
filing.

25 • Finally, the options presented do not take into
26 account the significant differences between investor
27 owned utilities and customer owned cooperatives. The
28 latter have no shareholder/customer conflict or profit
motive. All witnesses agreed that cooperatives,
because of these and other differences, deserved
different stranded cost treatment.

At least some of these concerns could be addressed by making the
discussion of the three options permissive rather than mandatory and
changing their details from absolute maxims to guidelines. Affected

1 utilities should then be instructed to file an overall plan with
2 appropriate detail directed to their individual circumstances within
3 60 days of the Order's effective date.

4 True-up Mechanism.

5 At page 18 of the Proposed Opinion, a true-up is stated as
6 necessary only in relation to the net revenues lost method. Although
7 the Cooperatives admit, as previously noted, that the details of the
8 Financial Integrity Methodology are sketchy, we believe it too
9 requires a true-up.

10 Price Cap/Rate Freeze.

11 The Cooperatives simply do not understand this discussion
12 at page 18 of the Proposed Opinion. In particular, we are unable to
13 locate the "limitation" which the Proposed Opinion states has been
14 placed on increases in the standard offer rate as a result of
15 stranded costs. In any event, the Cooperatives oppose a price
16 cap/rate freeze both because it exceeds the Commission's jurisdiction
17 and, as importantly, is antithetical to the stated desire to move to
18 a competitive market.

19 CONCLUSION

20 "One size fits all" solutions, particularly in this area,
21 simply don't. The Cooperatives acknowledge that the Proposed Opinion
22 has brought some clarification and standards to several stranded cost
23 issues. They suggest, however, that precise specification of
24 particular methods with rigid criteria be avoided and that Affected
25 Utilities be given the ability to propose a plan best suited to their
26 individual circumstances.

27

28

1 RESPECTFULLY SUBMITTED this 29th day of May, 1998.

2 GALLAGHER & KENNEDY, P.A.

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